

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

In Re: Name Change of RJA, a minor : NO. 17 - 0760
: :
: CIVIL ACTION

OPINION AND ORDER

Before the court is NJ's Petition for Change of Name, filed May 15, 2017, through which he seeks to change the surname of his minor daughter. A hearing on the petition was held October 17, 2017.

RJA was born January 20, 2012 and is currently five years old. At the time of RJA's conception, her Mother, LA, was married but separated from her husband, JA. Mother thereafter reconciled with her husband and when RJA was born, Mother gave her the surname "A", which she shares with her husband. Father seeks to change RJA's surname from "A" to "J", his own surname.

In a proceeding to change a minor's surname, "the child's best interests unquestionably must control [the trial court's discretion]." In re Petition of Schidlmeier, 496 A.2d 1249, 1253 (Pa. Super. 1985); *see also* In re Grimes, 609 A.2d 158 (1992). Further, the petitioning party has the burden of coming forward with evidence that the name change would be in the child's best interest, and where a petition to change a child's name is contested, the court must carefully evaluate all of the relevant factual circumstances to determine if the petitioning parent has met that burden. In re Name Change of CRC, 819 A.2d 558 (Pa. Super. 2003). In that evaluation, neither parent is to be accorded a presumption. Id.

In adopting the "best interests of the child" standard of review in appeals from the grant of a petition for change of name of a minor child by a non-custodial parent, the Pennsylvania Supreme Court noted:

Specific guidelines are difficult to establish, for the circumstances in each case will be unique, as each child has individual physical, intellectual, moral, social and spiritual needs. However, general considerations should include the natural bonds between parent and child, the social stigma or respect afforded a particular name within the community, and, where the child is of sufficient age, whether the child intellectually and rationally understands the significance of changing his or her name.

Grimes, *supra*, at 161 (citation omitted).

Finally, the "best interest of the child standard" has been explained in Sawko v. Sawko, 625 A.2d 692, 693 (Pa. Super. 1993), to require consideration of "all factors which legitimately have an effect upon the child's physical, intellectual, moral and spiritual well-being."

Addressing first the "Grimes" factors, the court notes the parties did agree there is no social stigma or particular respect associated with either name. They also agree that the child is well-bonded with both of her parents.¹ She spends alternating weeks with each parent and has done so since January of this year. Neither party testified to any issues with this arrangement. Finally, it appears that although she is only age five, the child may be able to understand that a change in her surname would replace her mother and step-father's surname with that of her father;² the court doubts, however, that she would be able to understand the

¹ This is supported by a finding by the Honorable Joy Reynolds McCoy following a custody trial in late 2016 (to No. 13-20,388), to be discussed *infra*, that "both [parents] have a very loving bonded relationship with" RJA. N.T., January 6, 2017 at p. 7.

² In that same trial, Judge McCoy found the child to be "very intelligent for her age". *Id.*

nuances behind that change. It would be up to the parents to make sure no negative significance is attributed to the change should it be determined in her best interests.

More difficult to analyze are the “factors which legitimately have an effect upon the child's physical, intellectual, moral and spiritual well-being”.

Mother and her husband have two children, ages 8 and 10, both of whom, of course, share their surname, “A”. Mother also has two older children, both teenagers, both of whom live with Mother and Husband, each of whom has a different surname, different from Mother’s as well as from each other’s, that is, the surname of each child’s father. The court notes this fact to put in perspective the effect of changing RJA’s surname; she would not be the only one in the household with a different name, but would have the name of her father, as do all the other of Mother’s children.

Father has another child, age 11, who has his surname, “J”. Father is not married to the child’s mother, but does have partial custody of the child and RJA has formed a relationship with him. Were RJA to have the same surname as Father’s other child, it could very well serve to promote RJA’s understanding of how she fits into the family structure.

At age five, RJA has just entered kindergarten and has learned to write her name. Mother points to the change in custody (to week-to-week) last January and the change in school (starting kindergarten) as too many recent changes and fears another change in RJA’s life would be detrimental. She believes the decision should be postponed until RJA is older so she can make the decision herself. There is no evidence that RJA suffered from either the change in custody or the start of her schooling, however, and a name change would not be “piling on”.

Further, although RJA has learned to spell “A”, there is no reason she cannot learn to spell “J” as well, and will need to know how to spell both names in any event. The court finds children to be more adaptable to changes than parents often realize, and this factor is not especially important.

What does appear to be of particular significance, however, and apparently one of the driving forces behind the filing of the petition, is Mother’s practice of teaching RJA to refer to her step-father as “daddy” and to her father by his first name, “Nate”. Although RJA now calls Father “daddy” when she is in his presence, it appears she refers to him by his first name or as “daddy Nate” when she is not in his presence. In her ruling following the custody trial, Judge McCoy expressed “concerns about [RJA] not referring to dad as dad when she’s in mom’s home” and instructed the parties that “[NJ] is [RJA’s] father and that should always be emphasized and she should never be allowed to call him anything but daddy.”³ Judge McCoy determined that it was “very important that dad have a much more active role”⁴ in RJA’s life and awarded Father equal shared physical custody based, in part, on her perception that Mother was attempting to minimize that role.

The court also considers the lack of stability of Mother’s relationship with her husband.⁵ She was separated from Husband previously, and Judge McCoy found their marriage “rocky at times”⁶ and questioned the stability of the relationship.⁷ Should Mother and Husband divorce, and Mother re-take her maiden name or remarry and take her new husband’s name, RJA would no longer

³ Id. at p. 6-7.

⁴ Id. at p. 10.

⁵ It is noted that Mother’s husband did not appear at the hearing and no explanation was given for his absence.

⁶ Id. at p. 5.

⁷ Id. at p. 6.

have the same surname as her Mother. This possibility serves to weaken Mother's position, to have the child have "*her* surname."

Finally, the court considers Father's efforts to become involved in the child's life. He filed for custody in 2013 and has since filed twice more, the third time leading to a three-day trial. Father now has equal shared physical custody of the child and there was no evidence that he has not served in his role as "half-time parent" as well as mother has served in hers. Indeed, as noted previously, the child has a very loving, bonded relationship with Father.

It appears Father's concerns of alienation/minimization are legitimate and that the award of custody was in recognition of those concerns while also seeking to guard against instability and discord in Mother's home. Changing the child's surname to that of Father would help emphasize to RJA that NJ is her father and distinguish NJ from Mother's husband. Although Mother testified that the child was confused about having "two daddies", and the court agrees it would be very confusing for a young child after being born into a marriage and not the product of that union, it seems to the court that rather than confound the child by instructing her to refer to her step-father as "daddy" and Father as "Nate", Mother could have explained to RJA that, just like her two oldest half-siblings, her daddy lived in another home, that Mother's husband was part of the family in Mother's home and would help Mother to take care of her, but that he wasn't her daddy.

Considering all of the testimony, the court believes RJA's best interests will be served by allowing her to take her father's surname, thus emphasizing his role in her life, as was found important by the custody trial judge, and promoting her understanding of the family structure.

ORDER

AND NOW, this 24th day of October 2017, for the foregoing reasons, the Petition for Change of Name is hereby GRANTED. RJA'S name shall be changed to, and she shall hereafter be known as, RJJ. The parties are directed to take all necessary steps to effectuate this name change on the child's legal records and birth certificate.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Christina Dinges, Esq.
Heather Lewis, Esq.
Gary Weber, Esq. (Lycoming Reporter)
Hon. Dudley Anderson